

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.14874 of 2016
Date of decision:27.7.2016**

Jagtar Singh and another

...Petitioners

Versus

Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Navdeep Chhabra, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 13.5.2016 (Annexure P-7) passed by the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, setting aside the order dated 26.6.2015 passed by the Divisional Canal Officer, Abohar, allowing the prayer made by respondents 2 and 3, shifting their land measuring 9.67 acres from Mogha Burji No.11134-L Muktsar Rajbaha to Mogha Burji No.9187-L Muktsar Rajbaha, petitioners have approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India.

Learned counsel for the petitioners, while referring to site plan (Annexure P-2), submits that respondent No.1 failed to appreciate the true fact situation obtaining at the site, while passing the impugned order. He further submits that the impugned order shall adversely affect the facility of irrigation, being enjoyed by the petitioner, because the quantity of water shall be reduced. He also submits that respondents No. 2 and 3 were already having sufficient water for their fields and their land was not liable

to be transferred from existing Mogha Burji No.11134-L Muktsar Rajbaha to Mogha Burji No.9187-L Muktsar Rajbaha, from which the petitioners have been irrigating their fields. He prays for setting aside the impugned order, by allowing the present writ petition.

Having heard the learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the impugned order is not only self-contained and speaking order but it is also based on cogent findings which have been supported by sound reasons and the same deserves to be upheld. The writ petition, having been found bereft of any merit, is liable to be dismissed, for the following more than one reasons.

There is no denying the fact that the land of private respondents was situated at the tail end of Mogha Burji No.11134-L Muktsar Rajbaha. This was the reason that respondents No.2 and 3 were not getting proper irrigation for their fields, which forced them to apply to the canal authorities, for transferring their land from Mogha Burji No.11134-L Muktsar Rajbaha to Mogha Burji No.9187-L Muktsar Rajbaha, so that their land may get sufficient irrigation. However, without appreciating the practical difficulty, which was being faced by private respondents No.2 and 3 at the site, Divisional Canal Officer passed the order dated 26.6.2015 (Annexure P-6), rejecting the published scheme.

Dissatisfied with the above-said order passed by the Divisional Canal Officer, respondents No.2 and 3 filed their appeal before respondent No.1, who discussed each and every relevant aspect of the matter, including the technical aspects, before recording his cogent findings on each and

every issue, by passing the impugned order dated 13.5.2016 (Annexure P-7). Since the impugned order dated 13.5.2016 has been found perfectly in order, strictly in accordance with the true fact situation obtaining at the site as well as official record and also passed in consonance with the relevant provisions of law, it deserves to be upheld for this reason also.

The relevant observations made by the Superintending Canal Officer, in the operative part of his impugned order, which deserve to be noticed here, read as under:-

“On 10.3.2016 the appellants and the counsel appearing on their behalf and the contentions of the respondents were again considered minutely. The record annexed with the case was looked into minutely. The site plan was also seen. After looking into the record included with the case file and after considering the same this Court has found that the prayer of appellants is genuine and acceptable because as per the site land of appellants is very far from Mogha Burji No.11134-L Muktsar Rajwaha and is situated on the tail of Mogha and it is on the head of proposed Mogha Burji No.9187-L Rajwaha Muktsar, whereas from the existing Mogha due to long length of khal and due to their breakage and land being situated on the tail of Mogha, the water pressure remains low. The command statement has also been checked by this Court, which shows better irrigation of land of appellants from proposed Mogha as compared to existing Mogha and on inclusion of land in proposed Mogha 9187-L Muktsar Rajwaha, length of Khal shall also be reduced. Due to which

water pressure will be more and there will be enhanced irrigation. So far as objection of the respondents is concerned that on inclusion of land of appellants in proposed Mogha Burji 9187-L Muktsar Rajwaha, there will be no difference in size of Mogha, however their turns will be reduced and there will be lesser turn, this objection of the respondents is without any basis because khal of proposed Mogha Burji 9187-L Muktsar Rajwaha, which is pipe outlet, there will be no change in its Nakka or any other thing. Even if pucca khal are constructed on Mogha, there always capacity to include 10% more land, however, in this case land of the appellants is merely 5%. Therefore, there will be no change in size of existing and proposed Mogha and there will be no chance of repair or reconstruction. Secondly if land of the appellants is included in proposed Mogha then Nakka for taking water will be head Mogha and Nakka for giving water will also be head Mogha for land of appellants. If land of appellants is transferred from the existing Mogha to the proposed Mogha, the appellants are ready to bear expenses of underground pipes laid down by the respondents of the proposed Mogha which comes to share of appellants and are also ready to abide all the instructions of Canal Department as per the affidavits submitted by them (which are on record). As per which the appellants will be able to take water from the proposed Mogha 9187-L Rajwaha in case the appellants give expenses of underground pipes only. Therefore this order be not

implemented till that date.

Therefore in the light of aforementioned facts and as per the prayer of appellants and after considering the prime object of better irrigation and policy of growing more grain/food, this Court U/s 30-B (3) of Northern India Canal and Drainage Act 8-1873 and Punjab Amendment Act 23 of 1965, while allowing the appeal of the appellants, approve the published scheme for transferring 9.67 acres of land from Mogha Burji 11134-L Muktsar Rajwaha and including it in the Chak of 9187-L Muktsar Rajwaha, which was rejected by Divisional Canal Officer, Abohar, Canal Division Abohar vide its order dated 26.6.2015. Meaning thereby the order dated 26.6.2015 passed by Divisional Canal Officer, Abohar Canal Division, Abohar is hereby set aside. This order was reserved. Therefore, both the parties be apprised of the decision as per the Rules.”

A reading of the above-said observations made by respondent No.1 would show that he has not ordered the transfer of land of private respondents to Mogha Burji No.9187-L Muktsar Rajbaha, just for a song, rather he has asked the private respondents to give an undertaking that they will laid down underground pipes at their own expenses. That is how, respondent No.1 has rightly strike a balance with a view to do complete and substantial justice between the parties, providing adequate facility of irrigation to the private respondents and without causing any prejudice to the interest of the petitioners.

It has also been recorded that land of private respondents was

just 5% of the total land, which was being irrigated by Mogha Burji No.9187-L Muktsar Rajbaha, because of which transferring of land of private respondents on this Mogha Burji was not going to adversely affect the facility of irrigation of the petitioners. In fact, respondent No.1 has minutely discussed each and other relevant aspect of the matter including technical aspects of the case, before passing the impugned order and the same deserves to be upheld for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order passed by respondent No.1 has not been found suffering from any patent illegality or perversity nor any kind of prejudice has been shown to have been cause to the petitioners, the same deserves to be upheld. The instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

27.7.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No